

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DJEBY SIDIBE,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPT. and P.O. FRANK GALIA,

Defendants.  
----- X

**ANSWER**

07 Civ. 6028 (SAS)

**JURY TRIAL DEMANDED**

Defendants City of New York (“City”) and Police Officer Frank Galia,<sup>1</sup> by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the amended complaint, respectfully allege, upon information and belief, as follows.

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “1” of the complaint.
2. Admit the allegations set forth in paragraph “2” of the complaint.
3. Deny the allegations set forth in paragraph “3” of the complaint, except admit that the City of New York maintains a police department.
4. Deny the allegations set forth in paragraph “4” of the complaint, except admit that the City of New York maintains a police department and respectfully refer the Court to the New York City Charter and Administrative Code for a full and complete statement of the relationship between the City of New York and the New York City Police Department.

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<sup>1</sup> On information and belief, the New York City Police Department (“NYPD”), which plaintiff purports to name as a defendant, has not yet been served with a copy of the summons and complaint in this action. Defendants nonetheless maintain that the NYPD is not a suable entity.

5. Deny the allegations set forth in paragraph “5” of the complaint, except admit that Frank Galia, Shield No. 24153, is employed as an NYPD police officer.

6. The allegations set forth in paragraph “6” of the complaint constitute conclusions of law rather than averments of fact to which no response is required.

7. Deny the allegations set forth in paragraph “7” of the complaint except admit that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.

8. Deny the allegations set forth in paragraph “8” of the complaint, except admit that plaintiff purports to invoke the supplemental jurisdiction of this Court as stated therein.

9. Deny the allegations set forth in paragraph “9” of the complaint, except admit that plaintiff purports to base venue as stated therein.

10. Deny the allegations set forth in paragraph “10” of the complaint, except admit that a document purporting to be a notice of claim was received by the New York City Comptroller’s Office on or about September 11, 2006.

11. Deny the allegations set forth in paragraph “11” of the complaint, except admit that no payment has been made.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the complaint.

13. Deny the allegations set forth in paragraph “13” of the complaint.

14. Deny the allegations set forth in paragraph “14” of the complaint.

15. The allegations set forth in paragraph “15” of the complaint constitute conclusions of law rather than averments of fact to which no response is required.

16. Deny the allegations set forth in paragraph “16” of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning whether plaintiff is a licensed New York City taxi operator, and admit that plaintiff was stopped in the vicinity of West 54<sup>th</sup> Street and 8<sup>th</sup> Avenue.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Deny the allegations set forth in paragraph “18” of the complaint.

19. Deny the allegations set forth in paragraph “19” of the complaint.

20. Deny the allegations set forth in paragraph “20” of the complaint.

21. Deny the allegations set forth in paragraph “21” of the complaint.

22. Deny the allegations set forth in paragraph “22” of the complaint, and refer the Court and parties to the summons for a complete statement of its contents.

23. Deny the allegations set forth in paragraph “23” of the complaint, except admit that plaintiff was treated at St. Luke’s Roosevelt Hospital.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the complaint except refer the Court and parties to the summons and envelope for a complete statement of its contents.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “25” of the complaint, except admit that the return date on the summons was September 25, 2006, and that the court found that the summons was not a “legally acceptable accusatory instrument.”

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint.

28. In response to the allegations set forth in paragraph “28” of the complaint, defendants repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

29. Deny the allegations set forth in paragraph “29” of the complaint.

30. Deny the allegations set forth in paragraph “30” of the complaint.

31. The allegations set forth in paragraph “31” of the complaint constitute conclusions of law rather than averments of fact to which no response is required.

32. Deny the allegations set forth in paragraph “32” of the complaint.

33. Deny the allegations set forth in paragraph “33” of the complaint.

34. Deny the allegations set forth in paragraph “34” of the complaint.

35. In response to the allegations set forth in paragraph “35” of the complaint, defendants repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. The allegations set forth in paragraph “37” of the complaint constitute conclusions of law rather than averments of fact to which no response is required.

38. Deny the allegations set forth in paragraph “38” of the complaint.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. In response to the allegations set forth in paragraph “40” of the complaint, defendants repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

41. Deny the allegations set forth in paragraph “41” of the complaint.

42. Deny the allegations set forth in paragraph “42” of the complaint.

43. Deny the allegations set forth in paragraph “43” of the complaint.

44. Deny the allegations set forth in paragraph “44” of the complaint.

45. Deny the allegations set forth in paragraph “45” of the complaint.

46. Deny the allegations set forth in paragraph “46” of the complaint.

47. Deny the allegations set forth in paragraph “47” of the complaint.

48. In response to the allegations set forth in paragraph “48” of the complaint, defendants repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

49. The allegations set forth in paragraph “49” constitute conclusions of law rather than averments of fact to which no response is required.

50. Deny the allegations set forth in paragraph “50” of the complaint.

51. Deny the allegations set forth in paragraph “51” of the complaint.

52. Deny the allegations set forth in paragraph “52” of the complaint.

53. Deny the allegations set forth in paragraph “53” of the complaint.

54. In response to the allegations set forth in paragraph “54” of the complaint, defendants repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

55. Deny the allegations set forth in paragraph “55” of the complaint.

56. Deny the allegations set forth in paragraph “56” of the complaint.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. Deny the allegations set forth in paragraph “58” of the complaint.

59. Deny the allegations set forth in paragraph “59” of the complaint.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny the allegations set forth in paragraph “62” of the complaint.

63. Deny the allegations set forth in paragraph “63” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

64. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

65. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

66. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

67. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct or the culpable or negligent conduct of others and was not the proximate result of any act of defendants.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

68. Defendant Galia has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore is protected by qualified immunity.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

69. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

70. The actions of any police officers involved were justified by probable cause.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

71. Plaintiff provoked any incident.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

72. Plaintiff's claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

73. Plaintiff's claims may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

74. Plaintiff's claims are barred, in part, by the applicable statute of limitations.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

75. Plaintiff cannot obtain punitive damages as against the City of New York.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

76. The New York City Police Department is not a suable entity.





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Defendants.

**ANSWER**

*MICHAEL A. CARDOZO*  
*Corporation Counsel of the City of New York*  
Attorney for Defendants City of New York  
and Police Officer Galia  
100 Church Street  
New York, N.Y. 10007

*Of Counsel: Anna Nguyen*  
*Tel: (212) 788-0971*  
*NYCLIS No.*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for.....*